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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/075,730	02/14/2002	Karen A. McKirchy	P02293US2	2691
22885 7590 11/14/2007 MCKEE, VOORHEES & SEASE, P.L.C. 801 GRAND AVENUE SUITE 3200 DES MOINES, IA 50309-2721			EXAMINER VU, KIEU D	
			ART UNIT 2173	PAPER NUMBER
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/075,730

Applicant(s)

MCKIRCHY, KAREN A.

Examiner

Kieu D. Vu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 September 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-41 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-41 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1. This Office action is responsive to the Request for Continued Examination (RCE) filed under 37 CFR §1.53(d) for the instant application on 09/13/07. Applicants have properly set forth the RCE, which has been entered into the application, and an examination on the merits follows herewith.
2. The Declaration under CFR 1. 131 filed on 09/13/07 has been reviewed by the Examiner.
3. The Declaration filed on 09/13/07 under 37 CFR 1.131 is sufficient to overcome the Hatakama (US 5774118) reference.

Exhibits L and M submitted are sufficient to establish conception of claims 1, 2, 3, 4, 7, 8, 9, 11, 14, 16, 19, 21, 22, 23, 24, 25, 27, 28, 29, 30, 34, 36, 37, 39, 40 and 41 prior to the effective date of the Hatakama (US 5774118) reference and the Cook et al (USP 5727950) reference.

Exhibits L and M submitted are insufficient to establish conception of claims 5, 6, 12, 13, 15, 17, 18, and 20 prior to the effective date of the Cook et al (USP 5727950) reference. Specifically, exhibits L and M are insufficient to evidence the conception of different types of voices/ characters prior to the effective date of the Cook et al (USP 5727950) reference.

While conception is the mental part of the inventive act, it must be capable of proof, such as by demonstrative evidence or by a complete disclosure to another. Conception is more than a vague idea of how to solve a problem. The requisite means themselves and their interaction must also be comprehended. See *Mergenthaler v.*

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*Scudder*, 1897 C.D. 724, 81 O.G. 1417 (D.C. Cir. 1897). The evidence contains general allegation and does not specifically demonstrate how conception is established, therefore, the evidence is deficient in showing of conception of the subject matter of claims 5, 6, 12, 13, 15, 17, 18, and 20.

4. Claims 1, 2, 3, 4, 7, 8, 9, 11, 14, 16, 19, 21, 22, 23, 24, 25, 27, 28, 29, 30, 34, 36, 37, 39, 40 and 41 are now rejected under *Massaro et al* (US 5535321).

5. Since Exhibits L and M submitted are insufficient to establish conception of claims 5, 6, 12, 13, 15, 17, 18, and 20 prior to the effective date of the *Cook et al* (US 5727950) reference, claims 5, 6, 12, 13, 15, 17, 18, and 20 are now rejected under *Massaro et al* (US 5535321) and *Cook*.

***Claim Rejections - 35 USC § 101***

6. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

7. Claims 16-20 and 35-41 are rejected under 35 U.S.C. 101

Regarding claims 16-20 and 35-41, the language of the claims is non-functional descriptive material. Furthermore, the “interactive learning system” as claimed does not belong into any one of four statutory categories (process, machine, manufacture, or composition of matter).

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8. To expedite a complete examination of the instance application, the claims rejected under 35 USC 101 (non-statutory) above are further rejected as set forth below in anticipation of applicant amending these claims to place them within the four statutory categories of invention.

***Claim Rejections - 35 USC § 102***

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

10. Claims 1-4, 7-11, 14, 16, 19, 24, 31, and 38 are rejected under 35 U.S.C. 102(e) as being anticipated by Massaro et al ("Massaro", USP 5535321).

Regarding claim 1, Massaro teaches a method of providing instruction to a user of an instructional program comprising presenting an interactive instructional program to the user via an information processing device (method of displaying help information matching characteristics of a user) (see column 1, lines 64-67), the program having a plurality of sections related to a subject (the program has several function which is identified by an identifier 24) (Fig. 3); making available to the user additional instructional options to the user related to a section (see levels in Fig. 3); the additional instructional options including information presented to the user in a form perceivable by the user at a first level of sophistication (information presented to the user at basic

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level), additional instructional information available to the user in at least first and second levels of sophistication, any of the at least first and second levels of sophistication being user selectable, at any time in any order (information presented to the user at basic, intermediate, or advanced levels) (the user can select the levels of sophistication at any time he or she desires, line 63 of col. 3 to line 7 of col. 4).

Regarding claim 2, Massaro teaches that the first level of sophistication comprises information at a first level of comprehension (first level of sophistication is basic level which comprises information at basic level) (see Fig. 3).

Regarding claim 3, Massaro teaches that the second level of sophistication comprises information at a second level of comprehension (second level of sophistication is intermediate level which comprises information at intermediate level) (see Fig. 3).

Regarding claim 4, Massaro teaches that the second level of comprehension is at a higher level than the first level of comprehension (col. 6, lines 10-25).

Regarding claim 7, Massaro teaches the first level of sophistication has short, plain language, summary fashion (col. 6, lines 10-25).

Regarding claim 8, Massaro teaches that the second level of sophistication has long, high educational, more complex language (col. 6, lines 10-25)

Regarding claim 9, Massaro teaches that each level of sophistication has one detail of information attribute that differs from the other level of sophistication. For example, detail of information of basic level is different than the detail of information in expert level (see col. 6, lines 10-25).

Regarding claim 10, Massaro teaches that information is presented to the user in a form perceivable by the user at least a third level of sophistication (information presented to the user at advanced level) (Fig. 3).

Regarding claims 11 and 16, Massaro teaches an apparatus for providing additional instruction to a user of an instructional program (device for displaying help information matching characteristics of a user) (see column 1, lines 64-67) comprising a computer including a digital information storage medium and a software program loaded on the digital storage medium (see Figure 1), the program comprising  
(a) interactive instructional information relating to a subject matter (Fig. 3).

(b) an instruction module including additional instructional options related to the plurality of sections (function), the additional instructional options including additional instructional information available to the user in no less than two levels of sophistication, any of the levels of sophistication being user-selectable, at any time and in any order (information presented to the user at basic, intermediate, or advanced levels) (the user can select the levels of sophistication at any time he or she desires, line 63 of col. 3 to line 7 of col. 4).

Regarding claims 14 and 19, Massaro teaches that the two levels of sophistication include a first level (basic level) comprising a first textual content (information presented to the user at basic level) and a second level (intermediate level) comprising a second textual content (information presented to the user at intermediate level) (Fig. 3).

Regarding claims 24, 31, and 38, Massaro teaches the information comprises instruction related to the subject (col. 6, lines 10-25) -

***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 5-6, 12-13, 15, 17, 18, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Massaro and Cook et al ("Cook", USP 5727950).

Regarding claims 5 and 6, Massaro teaches at least two levels of sophistication of the help information (basic level and intermediate level). Massaro differs from the claim in that Massaro does not teach that the first level of sophistication comprises a first type of voice and/or the second level of sophistication comprises a second type of voice. However, Cook teaches that plurality of voices/gestures/motions can be used in the tutoring system (help information) (see col 6, lines 13-16) depending on the individual student. These voices/gestures/motions are associated with different help agents of different levels. For example, "Study Buddies" level are on-screen agents for grade schoolers, and coach level is on-screen agent of an adult (see col 6, lines 1-5). Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use Cook's teaching of using plural voices associated with plural agents for different help levels to provide first and second type of voices in Massaro's



learning system with the motivation being to provide customized, individualized instructional helps to different people.

Regarding claim 12, Massaro teaches at least two levels of sophistication of the help information (basic level and intermediate level). Massaro differs from the claim in that Massaro does not teach that the first level of sophistication comprises a first voice and the second level of sophistication comprises a second voice. However, Cook teaches that plurality of voices/gestures/ motions can be used in the tutoring system (help information) (see col 6, lines 13-16) depending on the individual student. These voices/gestures/motions are associated with different help agents of different levels. For example, "Study Buddies" level are on-screen agents for grade schoolers, and coach level is on-screen agent of an adult (see col 6, lines 1-5). Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use Cook's teaching of using plural voices associated with plural agents for different help levels to provide first and second voices in Massaro's learning system with the motivation being to provide customized, individualized instructional helps to different people.

Regarding claim 13, Massaro teaches that the two levels of sophistication include a first level (basic level) and a second level (intermediate level). Massaro does not teach that the first level of sophistication comprises a first character and a second level comprises a second character. However, the use of characters in instructional help technique is known in the art as taught by Cook. Specifically, Cook teaches an agent based instruction system which provide student with virtual tutors or on-screen agents (col 5, lines 21-24). The on-screen agents can appear as living entities appropriate for

level of a student (for example, "Study Buddies" are on-screen agents of grade schoolers (first character for first level) or a coach is on-screen agent of an adult (second character for second level)) (see col. 5, line 67 to col 6, line 12). Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made, to apply Cook's teaching of using different characters for different levels and/or different students to provide a first character and a second character for the two levels in Massaro's learning system with the motivation being to enhance customized and individualized instructional help method (Cook, col 5, lines 12-19).

Regarding claim 15, Massaro teaches at least two levels of sophistication of the help information (basic level and intermediate level). Massaro further teaches that the two levels of sophistication include a first level (basic level) comprising a first textual content (information presented to the user at basic level) and a second level (intermediate level) comprising a second textual content (information presented to the user at intermediate level) (col. 6, lines 10-24). Massaro differs from the claim in that Massaro does not teach that the first level of sophistication comprises a first voice and the second level of sophistication comprises a second voice. However, Cook teaches that plurality of voices/gestures/ motions can be used in the tutoring system (help information) (see col 6, lines 13-16) depending on the individual student. These voices/gestures/motions are associated with different help agents of different levels. For example, "Study Buddies" level are on-screen agents for grade schoolers, and coach level is on-screen agent of an adult (see col 6, lines 1-5). Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use Cook's teaching of using plural voices associated with plural agents for different help

levels to provide first and second voices in Massaro's learning system with the motivation being to provide customized, individualized instructional helps to different people.

Regarding claim 17, Massaro teaches at least two levels of sophistication of the help information (entry level and intermediate level) (Fig. 3). Massaro further teaches that help information can include voice (Massaro, col 6, lines 6-13). Massaro differs from the claim in that Massaro does not teach that the first level of sophistication comprises a first voice and the second level of sophistication comprises a second voice. However, Cook teaches that plurality of voices/gestures/ motions can be used in the tutoring system (help information) (see col 6, lines 13-16) depending on the individual student. These voices/gestures/motions are associated with different help agents of different levels. For example, "Study Buddies" level are on-screen agents for grade schoolers, and coach level is on-screen agent of an adult (see col 6, lines 1-5). Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use Cook's teaching of using plural voices associated with plural agents for different help levels to provide first and second voices in Massaro's learning system with the motivation being to provide customized, individualized instructional helps to different people.

Regarding claim 18, Massaro teaches that the two levels of sophistication include a first level (basic level) and a second level (intermediate level) (fig. 3) Massaro does not teach that the first level of sophistication comprises a first character and a second level comprises a second character. However, the use of plural characters in instructional help technique is known in the art as taught by Cook. Specifically, Cook

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teaches an agent based instruction system which provide student with virtual tutors or on-screen agents (col 5, lines 21-24). The on-screen agents can appear as living entities appropriate for level of a student (for example, "Study Buddies" are on-screen agents of grade schoolers or a coach is on-screen agent of an adult) (see col 6, lines 1-5). On-screen agents can be characters (col 10, lines 15). These characters are associated with different help agents of different levels. Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use Cook's teaching of using plural characters associated with plural agents for different help levels in Massaro's learning system with the motivation being to provide customized, individualized instructional helps to different people.

Regarding claim 20, Massaro teaches at least two levels of sophistication of the help information (basic level and intermediate level) (Fig. 3). Massaro differs from the claim in that Massaro does not teach that the first level of sophistication comprises a first voice and the second level of sophistication comprises a second voice. However, Cook teaches that plurality of voices/gestures/ motions can be used in the tutoring system (help information) (see col 6, lines 13-16) depending on the individual student. These voices/gestures/motions are associated with different help agents of different levels. For example, "Study Buddies" level are on-screen agents for grade schoolers, and coach level is on-screen agent of an adult (see col 6, lines 1-5). Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use Cook's teaching of using plural voices associated with plural agents for different help levels to provide first and second voices in Massaro's learning system with the

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motivation being to provide customized, individualized instructional helps to different people.

13. Claims 21-23, 25-30, 32-37, and 39-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Massaro.

Regarding claims 21, 28, and 41, Massaro does not teach at least two sections of the program have additional instructional options and the number of levels of sophistication varies between the at least two sections. It would have been obvious to one of ordinary skill in the art, having the teaching of Massaro before him at the time the invention was made, to modify the sections, options, and the number of levels of sophistication taught by Massaro to have at least two sections of the program having additional instructional options and the number of levels of sophistication varying between the at least two sections with the motivation being enhance the flexibility of Massaro's system.

Regarding claims 22, 29, and 36, Massaro does not teach at least two sections of the program have additional instructional options and the type of additional instructional information varies between the at least two sections. It would have been obvious to one of ordinary skill in the art, having the teaching of Massaro before him at the time the invention was made, to modify the sections, options, and the type of additional instructional information taught by Massaro to have two sections of the program having additional instructional options and the type of additional instructional information varying between the at least two sections with the motivation being enhance the flexibility of Massaro's system.

Regarding claims 23, 30, and 37, Massaro does not teach at least two sections of the program have additional instructional options and the number of levels of sophistication and type of additional instructional information varies between the at least two sections. It would have been obvious to one of ordinary skill in the art, having the teaching of Massaro before him at the time the invention was made, to modify the sections, options, the number of levels of sophistication and type of additional instructional information taught by Massaro to have two sections of the program having additional instructional options and the number of levels of sophistication and type of additional instructional information varying between the at least two sections with the motivation being enhance the flexibility of Massaro's system.

Regarding claims 25, 32, and 39, Massaro does not teach at least two sections of the program have the type of additional instructional information varies between the at least two sections. It would have been obvious to one of ordinary skill in the art, having the teaching of Massaro before him at the time the invention was made, to modify the type of additional instructional information taught by Massaro to have two sections of the program having the type of additional instructional information varying between the at least two sections with the motivation being enhance the flexibility of Massaro's system.

Regarding claims 26, 33, and 35, Massaro does not teach at least one section of the program having no additional instructional options. It would have been obvious to one of ordinary skill in the art, having the teaching of Massaro before him at the time the invention was made, to modify Massaro's teaching to have at least one section of the

program having no additional instructional options with the motivation being enhance the flexibility of Massaro's system.

Regarding claims 27, 34, and 40, Massaro does not teach at least one section of the program having an additional instructional option at one level of sophistication. It would have been obvious to one of ordinary skill in the art, having the teaching of Massaro and Cook before him at the time the invention was made, to modify the type of additional instructional information taught by Massaro to have one section of the program having an additional instructional option at one level of sophistication with the motivation being enhance the flexibility of Massaro's system.

***Response to Applicant's arguments***

14. Applicant's arguments filed on 09/13/07 have been fully considered but they are not persuasive.

Applicant's argument on the 35 U.S.C. 101 rejection is not persuasive.

Regarding claims 16-20 and 35-41, it is noted that "a lesson in the form information on a digital media" as claimed is subject to copyright, not subject to patent. Therefore, the "interactive learning system" as claimed does not belong into any one of four statutory categories (process, machine, manufacture, or composition of matter) for patents.

Regarding arguments on the Declaration and exhibits L and M (filed on 09/13/07), please see sections 2, 3, 4, and 5.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kieu D. Vu. The examiner can normally be reached on Mon - Thu from 7:00AM to 3:00PM at 571-272-4057.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Cabeca, can be reached at 571-272-4048.

The fax phone numbers for the organization where this application or proceeding is assigned are as follows:

571-273-8300

and / or:

571-273-4057 (use this FAX #, only after approval by Examiner, for "INFORMAL" or "DRAFT" communication. Examiners may request that a formal paper / amendment be faxed directly to them on occasions).

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kieu D. Vu  
Primary Examiner